(1958) 01 PAT CK 0013

In the Patna High Court

Case No : Misc. Judl. Case No. 599 of 1955

J.N. Dutt — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 21-01-1958

Acts Referred:
Income Tax Act, 1961 — Section 46(1), 66(2)

Citation : AIR 1959 Patna 34 : (1958) 33 ITR 428

Hon'ble Judges : V. Ramaswami, C.J;R.K. Choudhary, J

Bench : Division Bench

Advocate : Sudhir Chandra Ghose, for the Appellant; R.J. Bahadur, for the Respondent

Judgement

1. It appears that for the assessment year 1953-54, the Income Tax Officer of Hazaribagh issued a notice upon the assessee u/s 18-A (1) of the Income Tax Act calling upon him to pay the tax in three equal instalments of Rs. 6,690/- each. The first instalment was to be paid on 15-9-1952, the second on 15-12-1952, and the third on 15-3-1953. The notice was served on the assessee on 21-11-1952, and so he had to pay the total amount of tax in two equal instalments, the first on 15-12-1952, and the second on 15-3-1953, under the provisions of Section 18-A (1) of the Act.

It appears that the assessee committed default in payment of the first instalment due on 15-12-1952. Before the date on which the next instalment fell due, that is, on 15-3-1953, the assessee filed a revised estimate of his income which came to Rs. 3,000/- and the assessee also declared that no tax was payable by him. This declaration was made when the revised estimate was submitted by the assesses on 4-3-1953. For default in payment of the first instalment, the Income Tax Officer levied a penalty of Rs. 1,000 acting under the provisions of Section 46 (1) of the Income Tax Act.

Against the said order, the assessee preferred an appeal on 4-3-1953, to the Appellate Assistant Commissioner. The appeal was allowed by the Appellate

Assistant Commissioner and the demand for penalty was set aside. In the course of his order, the Appellate Assistant Commissioner stated as follows :

"The demand was wiped off by the submission of an estimate u/s 18-A showing a total income of Rs. 3,000/- only. The estimate was received in the I. T. O.''s office on 4-3-53 i.e., within the period flowed for filing the appeal against the imposition of the penalty. Thus the appeal is not barred under the first proviso to Section 30 (1).''''

The Income Tax Department presented an appeal before the Appellate Tribunal against the order of the Appellate Assistant Commissioner. The Appellate Tribunal allowed the appeal and set aside the order of the Appellate Assistant Commissioner and restored the order of the Income Tax Officer levy ing the penalty of Rs. 1000 upon the assessee.

2. As required by the High Court u/s 66 (2) of the Income Tax Act, the appellate Tribunal has stated a case upon the following question of law :

"Whether in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that no appeal lay before the Appellate Assistant Commissioner."

3. On behalf of the assessee, learned Counsel put forward the argument that the Appellate Tribunal was wrong in holding that the amount of Rs. 6,690/-, which was the amount of the first instalment, was a tax payable by the assessee on 4-3-1953, on which date the appeal was preferred by the assesses before the Appellate Assistant Commissioner. In order to examine the validity of this argument, it is necessary to reproduce the language of Section 30, Sub-section (1) of the Income Tax Act, which states as follows :

"30. Appeal against assessment under this Act --(1). Any assessee objecting to the amount of income assessed u/s 23 or Section 27, or the amount of loss computed u/s 24 or the amount of tax determined u/s 23 or Section 27, or denying his liability to be assessed under this Act, or objecting to the cancellation by an Income Tax Officer of the registration of a firm under Sub-section (4) of Section 23 or to a refusal to register a firm under Sub-section (4) of Section 23 or Section 26-A, or to make a fresh assessment u/s 27, of objecting to any order under Sub-section (2) of Section 25 or Section 25-A or Sub-section (2) of Section 26 of Section 28 made by an Income Tax Officer or objecting to any penalty imposed by an Income Tax Officer under Sub-section (6) of Section 44-E or Sub-section (5) of Section 44-F or Sub-section (1) of Section 46, or objecting to a refusal of an Income Tax Officer to allow a claim to a refund u/s 48, 49 of 49-F, or to amount of the refund allowed by the Income Tax Officer under any of those sections, and any assessee. being a company, objecting to an order made by an Income Tax Officer under Sub-section (1) of Section 23-A, may appeal to the Appellate Assistant Commissioner against the assessment of against such refusal or order : Provided that no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax has been paid;"

It is also necessary to refer to Section 46 (1) of the Act in this connection, which is in the following terms :

"46. Mode and time of recovery : (1) When an assessse is in default in making a payment of Income Tax, the Income Tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty." The argument on behalf of the assesses is that the revised estimate was submitted by the assessee on 4-3-1953, before the expiry of the date of the second instalment under the provisions of Section 18A (2) and a declaration was made on behalf of the assesses that no tax was payable by him because the assessee''s estimate of the income was only Rs. 3,000/-. The contention put forward by Counsel for the assessee is that the effect of the filing of the revised estimate was that the demand notice of the first instalment was wiped away and there was no tax due to be paid within the meaning of the proviso to Section 30, Sub-section (1) of the statute.

We do not accept the submission as correct. Section 18-A (1) provides that in the case of income in, respect of which provision is not made u/s 18 for deduction of Income Tax at the time of payment, "the Income Tax Officer may, on or after the 1st day of April, in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March, in that year, respectively, an amount equal to one-quarter of the Income Tax and super-tax payable on so much such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded the maximum amount not chargeable to tax in his case by two thousand five hundred rupees."

As we have already stated, the demand notice was issued by the Income Tax Officer u/s 18-A (1) on 31-7-1952. It appears that the assessee committed a default in the payment of the amount due on 15-12-1952, and on 4-3-1953, the assessee filed a revised estimate of income under the provisions of Section 18-A (2) and made a declaration that no tax was payable by him. The effect of this revised estimate is given in Section 18-A (2) which reads as follows :

"18-A (2). If any assessee who is required to pay tax by an order under Sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income Tax Officer an estimate of the tax payable by him calculated in the manner laid down in Sub-section (1) on that part of his income for such period, and shall pay such amount as accords with his estimate in equal instalments on such of the dates specified in Sub-section 1(1) (a) as have not expired or in one sum if only the last of such dates has not expired : Provided that the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in Sub-section (1) (a) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment of in subsequent instalments."

It is manifest that Section 18-A (2) nowhere states'' that the demand notice served u/s 18-A (1) is wiped out or cancelled. The language of the sub-section unmistakably shows that the effect of filing a revised estimate is only to enable the assessee to alter the quantum of subsequent instalments, namely, such instalments due on the dates specified in Sub-section (1) (a) as have not expired.

In Other words, the effect of filing a revised estimate u/s 18-A (2) is only to make an adjustment in the payment of subsequent instalments and not to wipe out the legal effect of the notice served by the Income Tax Officer u/s 18-A (1). In our opinion, therefore, the Appellate Tribunal has taken the correct view of law in holding that the amount of the first instalment, which was not paid on the due date, that is 15-12-1952, was an arrear of tax payable by the assessee on the date when the appeal was filed before the Appellate Assistant Commissioner, that is, on 4-31953. This view as regards the interpretation of Section 18-A (2) is made still more clear by the language of Section 18-A (10) (a) which is in the following terms :

"(10) (a) If any assessee does not pay on the specified dates any instalment of tax that he is required to pay under Sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under Sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments."

4. It follows, therefore, that the assessee made a default in making the payment of Income Tax within the meaning of Section 46 (1) and since no tax was admittedly paid on 4-3-1953, the assessee is hit by the proviso to Section 30 (1) of the Act and an appeal to the Appellate Assistant Commissioner was incompetent.

Our conclusion, therefore, is that the Income- tax Appellate Tribunal was right in holding that no appeal lay before the Appellate Assistant Com missioner, and the question referred by the Income- tax Appellate Tribunal to the High Court must be answered against the assessee and in favour of the income tax Department. The assessee must pay the cost of this reference; hearing fee Rs. 200/-.

